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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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02/17/2006

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EXAMINER

PAGE, BRENT T

ART UNIT

PAPER NUMBER

1638

MAIL DATE

DELIVERY MODE

07/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

The cancellation of claims 25, 35-36, 40 and 44 without prejudice is hereby acknowledged.

Claim Rejections - 35 USC § 112

The rejection of claims 19-21 and 26-28 under 35 USC 112 first paragraph for lacking enablement and lacking written description is hereby withdrawn in response to the claim amendments when taken together with Applicants' arguments.

Claim Rejections - 35 USC § 103

Claims 19-21 and 26-28 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Hauptmann et al (US Patent 7223909 filed March 20, 2003) in view of Vishnevetsky et al (1999 The Plant Journal 20:423-431) for the reasons in the office action mailed out 09/18/2007 as well as the reasons set forth below.

Applicant's arguments filed 03/18/2008 have been fully considered but they are not persuasive.

Applicants urge that at the time of invention, numerous flower-specific promoters were known, but many do not direct expression of genes in a flower-specific or petal-specific fashion in the plants of the genus *Tagetes*, and therefore there would not have been a reasonable expectation of success.

This is not persuasive because one of ordinary skill in the art would still appreciate that a known floral-specific promoter is more likely than other types of promoters to direct floral-specific expression in *Tagetes* and would have therefore been

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motivated to use the promoter of the invention. Furthermore, Vishnevetsky also discloses the floral-specific nature of the CHRC promoter. The promoter is known in the art and the specificity of the promoter is desired in the genus *Tagetes* as demonstrated by Hauptmann. Absent direct evidence to the contrary involving the CHRC promoter, there would have been reasonable expectation of success by one of ordinary skill in the art in transforming *Tagetes* with the promoter and achieving floral and petal-specific expression as disclosed and demonstrated by Vishnevetsky.

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT PAGE whose telephone number is (571)272-5914. The examiner can normally be reached on Monday-Friday 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571)-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brent T Page

/Russell Kallis/

Primary Examiner, Art Unit 1638

7/03/2008